

SUBJECT: Limiting fines for local criminal offenses without a culpable mental state

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Hodge, Raymond, Reyna

0 nays

2 absent — Escobar, P. Moreno

WITNESSES: For — None

Against — None

On — Rodrigo Carreon; Marc Levin, Texas Public Policy Foundation/Center for Effective Justice.

BACKGROUND: Local governments may enact criminal prohibitions, such as curfews and smoking bans in public places. Under Section 54.001(b) of the Local Government Code, a city or county may impose a fine of not more than \$500 for violating most ordinances or rules. However, the same section stipulates that a fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation may not exceed \$2,000.

Violations of city or county ordinances are considered to be class C misdemeanors. Under state law, section 12.23 of the Penal Code, the maximum fine for violation of a class C misdemeanor is \$500.

Crimes that do not require a showing of a culpable mental state, such as intentional, knowing, or reckless culpability on the part of the perpetrator, are considered strict liability crimes. A speeding offense is one example.

DIGEST: CSHB 970 would require a culpable mental state for city or county offenses punishable by a fine more than the maximum authorized by Penal Code, sec. 12.23 (\$500 for a class C misdemeanor).

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 970 would address the problem of over-criminalization of activity that should be treated through civil enforcement and would reduce excessive fines for violations of strict liability crimes, which do not involve a culpable mental state. Local governments could continue to impose higher fines for violations of civil ordinances or for violations of criminal ordinances that required proof of a culpable mental state.

Most conduct cannot be labeled criminal unless it is accompanied by a culpable state of mind. While some conduct is criminalized without a required mental state, this is rare. The U.S. Supreme Court and the Texas Court of Criminal Appeals have recognized the importance of showing a culpable mental state before labeling someone a criminal and have held that strict liability crimes can be imposed only in rare cases. CSHB 970 would help protect municipalities from liability for improperly enacting strict liability crimes.

If a high fine is necessary to ensure compliance with an ordinance, the deliberate violation of an ordinance should have to have the accompanying mental state of intent, which could be shown through evidence of past violations. Under CSHB 970, cities and counties still could impose penalties in excess of \$500 for ordinance violations, but they would have to be treated as civil rather than a criminal violations unless they required a showing of a culpable mental state. For offenses that do not require a showing of a culpable mental state, civil penalties would be more appropriate because they would not attach to someone the stigma of being labeled a criminal.

**OPPONENTS
SAY:**

Strict liability crimes are imposed only in cases where it is difficult or unnecessary to show intent. In many cases, the violation is not the result of a positive act but of an omission, such as a failure meet health or safety standards. Because the violation itself can cause severe harm to the public, showing a culpable mental state should be unnecessary. Moreover, strict liability crimes usually apply to businesses, rather than to the public generally.

Higher penalties in these cases are necessary because they are the only way to ensure compliance and to hold offenders accountable. Otherwise, it could be more profitable for the offender to ignore the law and pay the fine. For instance, it could be more profitable for a bar to pay a \$500 civil penalty for ignoring an anti-smoking ordinance than it would be to

prohibit smoking in the bar. A higher penalty for a criminal offense, however, could deter the violation.

NOTES: The committee substitute reworded the original bill.